

Application No. 09/902,048
Attorney Docket No. 8163
Response dated February 17, 2006
Reply to Office Action of December 23, 2005

REMARKS

Claims 1-6 and 8-12 are pending in the present application. No additional claims fee is believed to be due.

The Rejection under 35 U.S.C. §103(a) over Schulz Jr. et al. in view of Dreschler et al. in further view of Fowler et al.

Claims 1-6 and 8-12 have been rejected under 35 USC §103(a) as being unpatentable over Schulz et al, US 5,654,362 (hereinafter "Schulz") in view of Dreschler et al., US No. 6,071,503 (hereinafter "Dreschler") in further view of Fowler et al. US No. 5,534,265 (hereinafter "Fowler"). Applicants respectfully traverse this rejection for two reasons. First, there is no motivation to combine the references, as required in MPEP 2143.01. Second, the combined references do not teach or suggest all of the claim limitations, as required in MPEP 2143.03. Thus, the obviousness rejection given in the Office Action does not establish a *prima facie* case of obviousness. Therefore, Applicants contend that the claimed invention is unobvious and that the rejection should be withdrawn.

There is no motivation to combine Schulz with Dreschler. The Office Action states that it would have been obvious to one of ordinary skill in the art to employ the elastomer disclosed by Schulz for removing transfer resistant cosmetics. Applicants respectfully disagree. Schulz teaches siloxane gels made by reacting a =Si-H containing polysiloxane with an alpha, omega-diene. Dreschler teaches a cosmetic composition applied to the lips comprising the combination of organosiloxane resins and fluid diorganosiloxane resins with a volatile carrier.

The Office Action states that one of ordinary skill in the art would have been motivated to incorporate further amounts of cyclodimethicone with the elastomer solid described in Schulz, if necessary for the removal of transfer resistant cosmetics. Applicants respectfully disagree. The Schulz reference is primarily directed to deodorant compositions. Column 2, lines 20-21 of Schulz states that the materials are ideal for use in solid cosmetics such as antiperspirants and deodorants. The Schulz reference only mentions the use of its silicone elastomer as a color cosmetic remover in a laundry list of potential uses. Most of the

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specification and the examples are directed to antiperspirant and deodorant compositions. One skilled in the art would not look to Schulz's teachings of solid antiperspirant and deodorant compositions to create a transfer resistant make-up removing composition.

One skilled in the art would have no motivation to combine Schulz's teachings of siloxane gels in an antiperspirant or deodorant composition with Dreschler's teaching of a cosmetic composition applied to the lips comprising organosiloxane resins and fluid diorganosiloxane resins. Therefore, Applicants contend that a *prima facie* case of obviousness has not been established, and the claimed invention is not obvious in view of the cited references.

In addition, the Office Action does not establish a *prima facie* case since the combined references fail to teach an element of the claimed invention. Specifically, Schulz, Dreschler, and Fowler do not teach or suggest a method for removing transfer resistant make-up compositions comprising the step of applying a safe and effective amount of a make-up removing composition comprising from about 0.1 to about 30% of a non-spherical crosslinked siloxane elastomer having a particle size of from about 10 to about 20 microns; from about 10 to about 80% of a solvent suitable for application to the skin having a solubility parameter of less than or equal to about 9 (cal./cm³)^{1/2}; optionally, water; and an emulsifier, wherein the composition has a viscosity greater than about 20,000 cps.

The Office Action states that the optimal amounts of a cosmetic ingredient (i.e. the elastomer) or the viscosity of a cosmetic composition is considered within the skill of the artisan. Applicants respectfully disagree. Factors including the amount of elastomer present, the particle size of the elastomer, the amount of solvent present, the solubility parameter of the solvent, and the viscosity of the composition are all directly related to the composition's ability to act as a transfer resistant make-up removing composition. As stated above, Schulz is directly related to a solid deodorant or antiperspirant composition. Thus, one skilled in the art would not optimize a deodorant or antiperspirant composition in developing a transfer resistant make-up composition.

The Office Action also states that using non-spherical particles would have been obvious. Applicants respectfully disagree. As described on page 8, lines 10-18 of the

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specification, the non-spherical crosslinked siloxane elastomers of the present invention are thought to provide preferred rheology and film properties in order to achieve the benefits of the present invention. Specifically, when forming the gel matrix or network, non-spherical particles swell and/or pack more tightly than spherical particles. There is no hint in the prior references that signifies consideration that non-spherical crosslinked siloxane elastomers of the present invention provide such benefits.

None of the prior references teach or suggest a method for removing transfer resistant make-up compositions comprising the step of applying a composition comprising a non-spherical crosslinked siloxane elastomer of a specific particle size in the amount claimed in the present invention in combination with a solvent having a specific solubility parameter, wherein the composition has a specific viscosity. Therefore, Applicants contend that a *prima facie* case of obviousness has not been established, and the claimed invention is not obvious in view of the cited references.

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CONCLUSION

In view of the above, Applicants respectfully submit that each of the issues raised by the Office Action has been addressed. Reconsideration and allowance of each of the pending claims is respectfully requested.

Respectfully submitted,

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